### Case 3:19-cv-00463-LRH-WGC Document 32 Filed 07/15/20 Page 2 of 9

1	in the above captioned matter. The Amer	nded Complaint is intended to address a typographical
2	error in the original Complaint related to the	he Plaintiff's address.
3		
4	Dated this 14 <sup>th</sup> day of July, 2020	Dated this 14th day of July, 2020
5	MARQUIS AURBACH COFFING	THORNDAL ARMSTRONG DELK BALKENBUSH & EISINGER
6		DALKENDUSH & EISINGER
7	By: <u>/s/ Ben Wharton/Tye S. Hanseen</u> Tye S. Hanseen, Esq.	By:/s/ Michael C. Winn Michael C. Winn, Esq.
8	Nevada Bar No. 10365 10001 Park Run Drive	Nevada Bar No. 12664 6590 S. McCarran Blvd., Suite B
9	Las Vegas, Nevada 89145  Local Counsel for Plaintiff	Reno, Nevada 89509  Attorneys for Defendant
10	Benjamin D. Wharton, Esq.	Attorneys for Defendant
11	de Luca Levine, LLC Three Valley Square, Suite 220	
12	Blue Bell, PA 19422  Attorney for Plaintiff – pro hac vice	
13	miorney for 1 idiniff – pro nac vice	
14		<u>ORDER</u>
15		IT IS SO ORDERED:
16		DATED this 15th day of July, 2020.
17		L11-1
18		San
19		LARRY R. HICKS UNITED STATES DISTRICT JUDGE
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# Las Vegas, Nevada 89145 (702) 382-0711 FAX: (702) 382-5816

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#### **CERTIFICATE OF SERVICE**

I hereby certify that I electronically filed the foregoing STIPULATION AND ORDER **TO AMEND COMPLAINT** with the Clerk of the Court for the United States District Court by using the court's CM/ECF system on the 14th day of July, 2020.

 $\boxtimes$ I further certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I further certify that some of the participants in the case are not registered CM/ECF users. I have mailed the foregoing document by First-Class Mail, postage prepaid, or have dispatched it to a third party commercial carrier for delivery within 3 calendar days to the following non-CM/ECF participants:

N/A

/s/ Rosie Wesp an employee of Marquis Aurbach Coffing

### Exhibit 1 Proposed Amended Complaint

1	Marquis Aurbach Coffing
2	Tye S. Hanseen, Esq. Nevada Bar No. 10365
3	10001 Park Run Drive Las Vegas, Nevada 89145
4	Telephone: (702) 382-0711 Facsimile: (702) 382-5816
5	thanseen@maclaw.com  Local counsel for Plaintiff
6	de Luca Levine.
7	Benjamin D. Wharton, Esq. Three Valley Square
8	Suite 220 Blue Bell, Pennsylvania 19422 Telephone: (215) 383-0081
9	Facsimile: (215) 383-0082
10	ddeluca@delucalevine.com Attorney for Plaintiff
11	UN
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13	COUNTRY MUTUAL INSUR
14	COMPANY as successor to HO MUTUAL INSURANCE COM
15	LAKERIDGE VILLAS HOME ASSOCIATION,
16	F
17	VS.
1 Q	

UNITED STATES DISTRICT COURT **DISTRICT OF NEVADA** 

**SURANCE** o HOLYOKE COMPANY a/s/o **OMEOWNERS** 

Case Number:

3:19-cv-00463-LRH-WGC

Plaintiff,

AMEND COMPLAINT

TYANNE ELLIS-GUN,

Defendant.

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Plaintiff, Country Mutual Insurance Company as successor to Holyoke Mutual Insurance Company as subrogee of Lakeridge Villas Homeowners Association (hereinafter "Plaintiff"), by and through undersigned counsel, hereby demands judgment against Defendant, Tyanne Ellis-Gun (hereinafter "Defendant"), and by way of Complaint against her avers as follows:

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1. Plaintiff is a corporation incorporated in State of Illinois, having its principal place of business at 1701 Towanda Avenue, Bloomington, Illinois.

**PARTIES** 

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2.	At all times	relevant	hereto,	Plaintiff	was	duly	authorized	to	provide	in	the	State
of Nevada the	insurance po	licy desc	ribed he	erein.								

- 3. At all times relevant hereto, Plaintiff provided, inter alia, property insurance to Lakeridge Villas Homeowners Association (hereinafter referred to as "subrogor") in connection with its business operations at a property that included the residence at 2104 Chicory Way in Reno, Nevada (hereinafter the "subject property").
- 4. In the wake of the incident described below, as a result of claims made on the aforementioned policy (which were duly paid pursuant thereto), Plaintiff became subrogated to certain recovery rights and interests of subrogor for monies paid thereunder, including the claims giving rise to this action.
- 5. Defendant was at all times relevant hereto an adult individual who resided at 2104 Chicory Way, Reno, Nevada.

#### **JURISDICTION AND VENUE**

- 6. Jurisdiction is based on 28 U.S.C. §1332(a)(1) as this action involves a controversy between citizens of different states, Plaintiff being a citizen of Illinois and Defendant alleged to be a citizen of Nevada; moreover, the amount in controversy exceeds the jurisdictional threshold of this Court (exclusive of interest and costs).
- 7. Venue is proper in this district based on 28 U.S.C. §1391(a) in that the events giving rise to this claim occurred within this district.

#### **STATEMENT OF FACTS**

- 8. On or about April 20, 2018, a fire erupted at the subject property causing substantial loss and damage to subrogor's property, as well as the imposition of other expenses and hardship besides.
- 9. The investigation as to the fire's origin and cause revealed that it was due to Defendant's negligent, careless, and inattentive use of a candle.
- 10. The fire resulted in significant harm to subrogor in an amount in excess of \$100,000.00; said harm was directly and proximately caused by Defendant as is more fully described below.

	11.	Subrogo	or su	bmitted	claims	to	Plaintiff	pui	rsuant to	the	afore	mention	ed policy;
Plainti	ff paid	such cla	iims	consiste	nt with	the	terms a	nd o	condition	s the	reof,	thereby	becoming
subrog	ated to	the recov	very	being pu	rsued ir	thi	s action.						

#### COUNT I – NEGLIGENCE

- 12. Plaintiff repeats the facts and allegations set forth in the prior paragraphs of this Complaint as though they were set forth at length herein.
- 13. Defendant owed subrogor a duty of care to refrain from engaging in conduct that created a foreseeable likelihood of harm to subrogor's property and the imposition of other expenses and hardship besides.
- 14. Defendant knew or should have known that negligent use of a candle would place subrogor and others similarly situated in risk of foreseeable harm.
- 15. Defendant knew or should have known that her negligent use of a candle would lead to damages to subrogor and those similarly situated.
- 16. Defendant's negligence and other unlawful actions and/or omissions consisted of, but are not limited to, the following:
  - (a) Carelessly and inattentively using a candle;
  - (b) Failing to properly extinguish the candle;
  - (c) Failing to exercise the reasonable care owed to subrogor; and/or
  - (d) Otherwise acting negligently under the circumstances.
- 17. Defendant's negligent and other unlawful actions and/or omissions were the direct and proximate cause of the damages sustained by subrogor.
- 18. As a direct and proximate result of Defendant's aforementioned negligence, subrogor sustained and incurred damage to its property, as well as the imposition of other expenses and hardship, in an amount in excess of \$100,000.00.
- 19. Subrogor submitted claims to Plaintiff pursuant to the aforementioned policy; Plaintiff paid such claims consistent with the terms and conditions thereof, thereby becoming subrogated to the recovery being pursued in this action.

#### Case 3:19-cv-00463-LRH-WGC Document 32 Filed 07/15/20 Page 8 of 9

MARQUIS AURBACH COFFING

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WHEREFORE, Plaintiff respectfully requests judgment against Defendant in an amount
in excess of \$100,000.00, plus costs incident to this suit, delay damages, attorney fees, and for
such other relief as this Honorable Court shall deem appropriate under the circumstances.

Dated this \_\_\_\_ day of July, 2020.

#### MARQUIS AURBACH COFFING

By Tye S. Hanseen, Esq. Nevada Bar No. 10365 10001 Park Run Drive Las Vegas, Nevada 89145 Local Counsel for Plaintiff

> Benjamin D. Wharton, Esq. de Luca Levine, LLC Three Valley Square, Suite 220 Blue Bell, PA 19422 Attorney for Plaintiff - pro hac

## 10001 Park Run Drive Las Vegas, Nevada 89145 (702) 382-0711 FAX: (702) 382-5816

I hereby certify that I electronically filed the foregoing AMENDED COMPLAINT with						
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on the day of July, 2020.						
☐ I further certify that all participants in the case are registered CM/ECF users and						
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following non-CM/ECF participants:						
N/A						
an employee of Marquis Aurbach Coffing						